



February 2023

Ministry of Corporate Affairs (MCA)

Circulars relating to the filing of company e-forms

Due to change in way of filing in Version-3, including fresh process of registration of users on MCA-21 and process of stabilization of 45 (forty-five) forms launched with effect from January 23, 2023, *vide* its general circular dated February 21, 2023 in continuation of general circulars dated January 9, 2023 and February 7, 2023, the MCA has extended the timelines for filing of these forms and form PAS-3, whose due dates fall between February 7, 2023 (January 20, 2023, in case of form PAS-3) and February 28, 2023, without payment of additional fees, till March 31, 2023. To facilitate the smooth process of incorporation of the new companies, the period of name reservation is extended by 20 (twenty) days and the proposed companies are allowed to resubmit their incorporation applications for further 15 (fifteen) days, whose due dates fall between January 23, 2023 and February 28, 2023.

The MCA, *vide* its circular dated February 22, 2023, has provided clarifications regarding filing of certain forms. Companies intending to file: (a) Form GNL-2 (filing of prospectus related documents and private placement); (b) MGT-14 (filing of resolutions relating to prospectus related documents, private placement); (c) PAS-3 (allotment of shares); (d) SH-8 (letter of offer for buyback of own shares or other securities); (e) SH-9 (declaration of solvency); and (f) SH-11 (return in respect of buy-back of securities) from February 22, 2023 to March 31, 2023, may file such forms in physical mode, with the concerned Registrar without payment of fee and take acknowledgement thereof. Such filing must be accompanied by an undertaking from the company that, the company will also file the relevant form in electronic form on MCA-21 Portal along with the prescribed fee payable.

For a detailed analysis of these circulars, please refer to the [JSA Prism of February 28, 2023](#).

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Transaction in corporate bonds by Alternative Investment Funds ("AIFs") through Request for Quote ("RFQ") platform

The SEBI, *vide* circular dated February 1, 2023, has stipulated that AIFs must undertake at least 10% of their total secondary market trades in corporate bonds by value in a month by placing/seeking quotes on the RFQ platform. All transactions in corporate bonds wherein AIF(s) is on both sides of the trade will be executed through RFQ platform in

'one-to-one' mode. However, any transaction entered by an AIF in corporate bonds in 'one-to-many' mode which gets executed with another AIF, will be counted in 'one-to-many' mode and not in 'one-to-one' mode. The provisions of this circular will come into force with effect from April 1, 2023.

Amendment to regulations on issue and listing of non-convertible securities

The SEBI, on February 2, 2023, has amended the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**"). The key amendments are as follows:

- the definition of Green Debt Security ("**GDS**") has been widened to include the debt securities issued for:(a) pollution prevention and control (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention, reduction and recycling, and energy or emission efficient waste to energy) and sectors specified under the India Cooling Action Plan launched by the Ministry of Environment, Forest and Climate Change; (b) circular economy adapted products, production technologies and processes and/or eco efficient products; (c) blue bonds; (d) yellow bonds, and (e) transition bonds;
- the issuer must send a notice regarding recall or redemption of non-convertible securities, prior to maturity, to all the eligible holders of such securities and the debenture trustee(s) at least 21 (twenty-one) days before the date from which such right is exercisable. Further, the requirement to make an advertisement in an English national daily and regional daily is done away with;
- the trust deed must contain a provision, mandating the issuer to appoint the person nominated by the debenture trustee(s), as a director on its board of directors not later than 1 (one) month from the date of receipt of nomination from the debenture trustee(s); and
- a public issue of debt securities or, non-convertible redeemable preference shares must be kept open for a minimum of 3 (three) working days and a maximum of 10 (ten) working days.

For a detailed analysis, please refer to the [JSA Prism of February 10, 2023](#).

Issuance and listing of GDS

The SEBI, *vide* circular dated February 3, 2023, has issued guidelines to address the concerns of investors regarding greenwashing with regards to GDS. 'Greenwashing', as it is generally understood, is making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation.

In an issuance of GDS, an issuer must ensure the following to avoid occurrence of greenwashing:

- while raising funds for transition towards a greener pathway, it must continuously check whether the path undertaken towards more sustainable form of operations is resulting in reduction of the adverse environmental impact and contributing towards sustainable economy;
- it must not utilize funds raised through green bonds for purposes that would not fall under the definition of GDS under the NCS Regulations. However, if it does, the issuer must disclose the same to the investors and, if required, by majority of debenture holders, undertake early redemption of such debt securities;
- it will not use misleading labels, hide trade-offs or cherry pick data from research to highlight green practices while obscuring others that are unfavourable in this behalf;
- it will maintain the highest standards associated with issue of GDS while adhering to the rating assigned to it;
- it will quantify the negative externalities associated with utilization of the funds raised through GDS; and
- it will not make untrue claims giving false impression of certification by a third-party entity.

Considering the increasing interest in sustainable finance in India, the SEBI, *vide* circular dated February 6, 2023, has revised the regulatory framework for GDS under the operational circular dated August 10, 2021, as amended for issue and listing of non-convertible securities. The provisions of this circular will come into force for all issues of GDS launched on or after April 1, 2023. An issuer desirous of issuing GDS must make the following key/ initial disclosures in the offer document for public issues/ private placements: (a) details of taxonomies, green standards or certifications (both Indian and global), and the alignment of projects with said taxonomies, and related criteria; (b) details of the alignment with the India's 'Intended Nationally Determined Contributions' when the proceeds are raised through issuance of transition bonds; (c) details of an indicative estimate of distribution of proceeds raised through issuance of GDS between financing and refinancing of project(s)/ asset(s); (d) details of the intended types of temporary placement of the unallocated and unutilised net proceeds; and (e) details related to the perceived social and environmental risks and proposed mitigation plan associated with the GDS financed/ refinanced project(s). Additionally, the issuer is required to (a) appoint independent third-party reviewer/ certifier for reviewing/ certifying the processes on a 'comply or explain' basis for 2 (two) years; (b) report on the environmental impact of the projects financed by GDS, on a project-by-project basis; (c) disclose major elements of Business Responsibility and Sustainability Reporting in the annual report; and (d) disclose details of the deployment of the mitigation plan for the perceived social and environmental risks in the annual report.

Clarifications on issue and listing of perpetual debt instruments, perpetual non-cumulative preference shares and similar instruments under the NCS Regulations

The SEBI, *vide* circular dated February 8, 2023, has clarified that only securities which have following characteristics, will necessarily be required to comply with the provisions for issuance and listing as specified under Chapter V of the NCS Regulations:

- the issuer is permitted by the Reserve Bank of India ("RBI") to issue such instruments;
- the instruments form part of non-equity regulatory capital;
- the instruments are perpetual debt instruments, perpetual non-cumulative preference shares or instruments of similar nature; and
- the instruments contain a discretion with the issuer/ RBI for events including but not restricted to all or any of the below events: (a) conversion into equity; (b) write off of interest/ principal; (c) skipping/ delaying payment of interest/principal; (d) making an early recall; and (e) changing any terms of issue of the instrument.

Compliance by the first-time issuers of debt securities under the NCS Regulations

Regulation 23(6) read along with regulation 2(1)(r) of the NCS Regulations requires the articles of association ("AoA") of an issuer that is a company to include provisions with respect to the requirement for the board of directors to appoint nominee director nominated by the debenture trustee in certain cases. The regulation also provides a time period up to September 30, 2023 for existing debt listed issuers to amend their AoA. The SEBI, *vide* circular dated February 9, 2023, has advised the stock exchanges take an undertaking from first-time issuers who are in the process of preparing for their first listed privately placed non-convertible debentures ("NCDs") or public issue of NCDs, that they will ensure that their AoA are amended within a period of 6 (six) months from the date of the listing of the debt securities. This undertaking may be obtained at the time of granting the in-principle approval.

Manner of achieving Minimum Public Shareholding ("MPS") by listed entities

Listed entities must achieve compliance with the MPS requirements mandated under Rule 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 read with regulation 38 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"). To facilitate listed entities achieve MPS compliance, the

SEBI, *vide* circular dated February 3, 2023, has reviewed and rationalised the existing methods and introduced additional methods. Accordingly, listed entities can achieve MPS by adopting any of the prescribed methods, including:

- increase in public holding pursuant to exercise of options and allotment of shares under an employee stock option scheme, subject to a maximum of 2% of the paid-up equity share capital of the listed entity;
- transfer of shares held by promoter(s)/ promoter group to an exchange traded fund managed by a SEBI-registered mutual fund, subject to a maximum of 5% of the paid-up equity share capital of the listed entity, and subject to other specified conditions;
- sale of shares held by promoter(s)/ promoter group in open market up to 2% (or 5%) of the paid-up equity share capital of the listed entity during a financial year, subject to specified conditions.

The stock exchange(s) must report to the SEBI any non-compliance(s) observed by them with respect to the method(s) and / or conditions prescribed on a quarterly basis.

Amendments to Buy-back Regulations

The SEBI, on February 7, 2023, has amended the SEBI (Buy-Back of Securities) Regulations, 2018 ("**Buy-back Regulations**") pursuant to the SEBI (Buy-Back of Securities) (Amendment) Regulations, 2023. These amendments aim to streamline the process of buyback from open market (with a view to making such process robust, efficient, transparent and shareholder-friendly), refine the process of buy-back through tender offers, streamline the buy-back timelines and align the requirements with the Companies Act, 2013. The key amendments are as follows:

- a company cannot authorise a buy-back unless it has obtained the prior consent of its lenders in case of a breach of any covenant with such lender. Further, the buy-back related documents (such as public announcement, letter of offer and explanatory statement to notice for general meeting) must contain a specific disclosure of the consent obtained by the company from its lender;
- in the buy-back through tender offer, the requirement of filing of a draft letter of offer with SEBI and subsequent requirement of SEBI providing its comments on the same is dispensed with. The merchant banker has to now provide a certificate certifying that the buy-back is compliant with the Buy-back Regulations and the and letter of offer contains the prescribed information;
- the number of days for which the tendering period is open has been reduced from 10 (ten) working days to five (five) working days and the escrow deposit must be made within 2 (two) working days of the public announcement. Further, the SEBI has permitted additional methods of escrow deposit, which include cash including bank deposits with scheduled commercial bank, deposit of frequently traded and freely transferable securities, government securities, units of mutual funds invested in gilt funds and overnight schemes and combination of the various escrow deposit methods;
- the board of directors of the company can, till 1 (one) working day prior to the record date, increase the maximum buy-back price and decrease the number of securities proposed to be bought back, such that there is no change in the aggregate size of the buy-back;
- buy-back from the open market through stock exchanges must be less than: (a) 15% of the paid up capital and free reserves of the company till March 31, 2023; (b) 10% of the paid up capital and free reserves of the company till March 31, 2024; (c) 5% of the paid up capital and free reserves of the company till March 31, 2025. Additionally, the closure period in buy-back from the open market through stock exchanges will be reduced in phased manner with buy-back from the open market through the stock exchange not being allowed with effect from April 1, 2025. Further, the concept of odd-lot buy-back has been done away with;
- the company must ensure that (a) at least 75% (this was earlier 50%) of the amount earmarked for buy-back is utilized for buying back shares; and (b) at least 40% of the amount earmarked for the buy-back is utilized within the initial half of the duration specified under the Buy-back Regulations;

- new provisions relating to disclosures, filing requirements and timelines for public announcement for buy-back through the book building process are detailed.

Amendments to Infrastructure Investment Trusts (“InvITs”) and Real Estate Investment Trusts (“REITs) Regulations

On February 14, 2023, the SEBI amended the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and the SEBI (Real Estate Investment Trusts) Regulations, 2014. The amendments deal primarily with obligations of the investment manager/ manager of InvITs and REITs. The key amendments are as follows:

- the investment manager/manager of the InvIT/ REIT must appoint an individual or a firm as the auditor, who will hold office from the date of conclusion of the annual meeting in which the auditor has been appointed till the date of conclusion of the sixth annual meeting of the unitholders. The investment manager/manager cannot appoint or re-appoint as the auditor (a) in case of an individual, for more than one term of 5 (five) consecutive years; and (b) in case of an audit firm, for more than 2 (two) terms of 5 (five) consecutive years;
- the auditors have to undertake a limited review of the audit of all the entities or companies whose accounts are to be consolidated with the accounts of the InvIT/REIT;
- amounts remaining unclaimed or unpaid out of distributions declared by InvITs/REITs must be transferred to the Investor Protection and Education Fund constituted by the SEBI;
- leverage calculation has been amended to clarify that (a) overnight mutual funds, characterized by investments in overnight securities and having maturity of one day, will be considered cash and cash equivalents; and (b) the amount of cash and cash equivalent will be excluded from the value of the REIT/ InvIT assets;
- certain provisions of the LODR Regulations have been made applicable to InvITs and REITs, such as constituting an audit committee, nomination and remuneration committee, risk management committee and stakeholders relationship committee, obligations with reference to employees including senior management and obligations with respect to independent directors;
- additional compliances by the investment manager/manager such as, the requirement of a woman independent director on the board of the investment manager/manager, establishing a vigil mechanism and submission of compliance reports.

Introduction of Issue Summary Document (“ISD”) and dissemination of issue advertisements

The SEBI, *vide* circular dated February 15, 2023, has introduced the ISD to make relevant information available at the stock exchanges and depositories in a structured manner for (a) public issues, (b) further issues (including preferential issue, qualified institutions placement, rights issue, issue of depository receipts and foreign currency convertible bonds), (c) buy-back of equity shares (through tender offer or from open market), (d) open offers, and (e) voluntary delisting of equity shares requiring exit opportunity. The ISD will be filed in 2 (two) stages: in first stage, containing pre-issue/ offer fields; and in second stage, containing post-issue/ offer fields after allotment/offer is completed/ as applicable for respective ISD. The prescribed formats of ISD also provide timelines for submission of the details and casts responsibility on the entity responsible for the submission. ISD will be implemented in 3 (three) phases: (a) in the first phase, the roll-out will be of ISD for public issues of specified securities, for offer documents filed on or after March 1, 2023; (b) in the second phase, ISD for further issues will be implemented from April 3, 2023; and (c) in the third phase, ISD for open offer, buy-back and voluntary delisting will be implemented from May 2, 2023.

In addition, lead managers are required to disseminate all advertisements in connection with a public issue under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 in PDF format on the website of the stock exchange(s) from March 1, 2023.

JSA Updates

Use of the word 'may' in an arbitration clause does not amount to parties agreeing to mandatory arbitration clause under which the courts would exercise jurisdiction under the Arbitration and Conciliation Act, 1996 ("Arbitration Act")

A single bench of the Bombay High Court ("**Bombay HC**") in its recent judgment *GTL Infrastructure Ltd. v. Vodafone Idea Ltd. (VIL)* *inter alia* held that an arbitration agreement which postulates a fresh consensus between the parties before referring the disputes to arbitration is not a mandatory/valid arbitration agreement. While deciding applications under Section 11(6) of the Arbitration Act for appointment of an arbitrator, the Bombay HC held that in arbitration agreements where the word 'may' has been used, there is no mandatory agreement to initiate arbitral proceedings.

For a detailed analysis, please refer to the [JSA Prism of February 7, 2023](#).

Supreme Court clarifies that the time limit for passing an arbitral award under amended Section 29A of the Arbitration Act is inapplicable to international commercial arbitrations

The Supreme Court of India ("**Supreme Court**") in its recent judgment in *Tata Sons Pvt. Ltd. v. Siva Industries and Holding Ltd and Ors.* has *inter alia* held that the time limit of 12 (twelve) months as provided under the amended Section 29A (1) of the Arbitration Act for rendering an award does not apply to 'international commercial arbitrations'.

For a detailed analysis, please refer to the [JSA Prism of January 30, 2023](#).

Bombay HC holds that material alterations to a cheque without the prior consent of both parties renders the instrument void

The Bombay HC has in its recent decision in *Pinak Bharat and Company vs. Shri Anil Ramrao Naik & Anr inter alia* held that a person cannot be held guilty for the offence of dishonour of cheque under Section 138 of the Negotiable Instruments Act ("**NI Act**") when the negotiable instrument has been altered without satisfying the contingencies for alteration of the instrument under Section 87 of the NI Act.

For a detailed analysis, please refer to the [JSA Prism of January 16, 2023](#).

Supreme Court holds that dues under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") will prevail over Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act")

The Supreme Court in the case of *Kotak Mahindra Bank Limited vs. Girnar Corrugators Pvt. Ltd. and Ors.* has held that the provisions of the SARFAESI Act for recovery of dues payable to a secured creditor will prevail over the provisions of the MSMED Act. The Supreme Court has emphasized the importance of recovery proceedings under the SARFAESI Act taking precedence over other recovery dues by way of Section 26E. The judgment has its significance rooted in the fact that in future litigations, the dues of secured creditors will have to be paid first in contrast to other dues pending under the provisions of the MSMED Act.

For a detailed analysis, please refer to the [JSA Prism of February 14, 2023](#).

Corporate Practice

JSA's corporate practice is centered around transactional and legal advisory services including day-to-day business, regulatory issues, corporate and governance affairs. We have an expert team of attorneys who advise on legal issues concerning inbound and outbound investments, strategic alliances, collaborations and corporate restructurings. We advise clients through all stages of complex and marquee assignments including restructuring, mergers and acquisitions (including those in the public space) to private equity and joint ventures. Our vast clientele includes multinational corporations and large Indian businesses in private, public and joint sector. We work closely with in-house counsel teams, investment banks, consulting and accounting firms along with multilateral agencies and policy making institutions on development of policy and legal frameworks. We provide assistance and counsel to start-ups and venture backed companies by drawing upon our in-depth understanding of how companies are incorporated, financed and grown. With an in-depth understanding of the industry combined with years of expertise, our attorneys provide innovative and constructive solutions to clients in complex transactional engagements. We emphasize teamwork across our wide network of offices across India. This allows us to benefit from the various specialisations available for the ultimate benefit of our clients. We also provide assistance in dealing with diverse corporate governance and compliance issues including FCPA /Anti-Bribery/Anti-Corruption matters and investigations.

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17 Practices and
24 Ranked Lawyers



16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



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